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1 Mr. Brothers call you at that number. Now what
2 number are we on? This is 9.
3 (Wade Deposition Exhibit Number 9 was
4 marked for identification.)
5 BY MR. SMITH:
6 Q. Can you identify for the record Number
7 9?
8 **A. Conference call notes from May 2,**
9 **1997.**
10 Q. Okay. Is this your management team
11 again?
12 **A. Yes, it is.**
13 Q. Did you prepare Exhibit 9?
14 **A. Did I take the meeting notes?**
15 Q. Yes.
16 **A. Probably.**
17 Q. And then from those notes did you type
18 up Number 9?
19 **A. Yes.**
20 Q. Okay. Were you in attendance at the
21 May 2, 1997, conference call?

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1 **A. Probably.**
2 Q. What does this waiver request that's
3 referenced in this?
4 **A. There was a waiver of the Part 32**
5 **requirements that was filed by the RBOCs to allow**
6 **accounting for SMS/800 costs and revenues to be**
7 **done on DSMI's books.**
8 Q. Okay. Do you -- was that waiver
9 granted by the FCC?
10 **A. Yes, it was.**
11 Q. And when was it granted?
12 **A. I --**
13 Q. This is May 2, 1997.
14 **A. I don't remember what the date was.**
15 Q. Since the time that it was granted and
16 continuously through the present, has that
17 accounting been done on the DSMI books?
18 **A. No.**
19 Q. Okay. Was there a change then at some
20 point?
21 **A. Yes, there was.**

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1 Q. When did that change occur?
2 **A. When Telcordia was sold to SAIC.**
3 Q. Since the time of that sale, how has
4 the accounting been done?
5 **A. The RBOCs have their own accounting**
6 **firm who maintains their books.**
7 Q. Okay. Was it deemed necessary to
8 obtain a further order from the FCC to
9 accommodate that change?
10 **A. Actually, the FCC issued an order**
11 **withdrawing the waiver because of the sale.**
12 MR. SMITH: Okay. Mark this 10.
13 (Wade Deposition Exhibit Number 10 was
14 marked for identification.)
15 MR. SMITH: What I would suggest,
16 Floyd, is that when the deposition is prepared,
17 at the latest -- I mean, if you can do it before,
18 that would be great. But at the latest when it's
19 prepared, insert the redacted sheet that shows
20 date of meeting and participants. Insert them
21 through the court reporter for each of the

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1 exhibits that were marked.
2 MR. JENSEN: Okay.
3 MR. SMITH: I guess we'd want you to
4 do that even for the ones that we're not marking;
5 although, there may be more urgency with the
6 exhibits.
7 BY MR. SMITH:
8 Q. We're on 10. Do you know what that is
9 Mr. Wade?
10 **A. I believe it's an excerpt from another**
11 **set of meeting notes, conference call notes.**
12 Q. Is this the management team again?
13 **A. I assume so.**
14 Q. Can you tell from the content of this
15 excerpt when this meeting was held?
16 **A. No.**
17 Q. It references a letter that's
18 responsive to a letter from Beehive to the
19 RespOrgs about the 629 numbers. Do you see that?
20 **A. Uh-huh, yes.**
21 Q. Was the letter that was drafted by

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1 Mr. Jensen that was responsive to the Beehive
2 letter circulated to members of the team either
3 in conjunction with this meeting that's reflected
4 in Exhibit 10 or after the fact?

5 **A. Well, it says it was.**

6 Q. It says the letter was reviewed by the
7 SMT. you're right. Does that mean all members
8 saw it?

9 **A. I don't know that.**

10 Q. We'd like to see a copy of the letter
11 as reviewed by the SMT as part of these minutes.
12 If you could, attach that.

13 **A. I'm not sure that I have a copy of**
14 **that. As a matter of fact, I'm pretty sure I**
15 **don't have a copy of that.**

16 Q. Well, I guess if you were the
17 custodian of the minutes at that time --

18 **A. Well, the letter is not part of the**
19 **minutes.**

20 MR. SMITH: Mark this 11.

21 (Wade Deposition Exhibit Number 11 was

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1 marked for identification.)

2 BY MR. SMITH:

3 Q. Okay. Can you identify Exhibit 11?

4 **A. It appears to be another portion of**
5 **conference call or meeting notes.**

6 Q. Okay. Would these be SMS management
7 team notes?

8 **A. It appears so.**

9 Q. Okay. Now judging from the content of
10 these notes, I would guess that this was a
11 meeting in or about July of 1998. Would you have
12 the same guess?

13 **A. I have no idea.**

14 Q. Well, it's talking about a response to
15 Judge Jenkins' order and an appeal on that. Do
16 you see that?

17 **A. Uh-huh, yes.**

18 Q. Do you have any reason to believe that
19 this meeting occurred at a time other than July
20 or August of 1998?

21 **A. I have no idea when the meeting**

1 **occurred.**

2 Q. Okay. That wasn't my question,
3 though. My question was, do you have any reason
4 to believe that Exhibit 11 would be reflecting a
5 meeting other than in July or August of '98?

6 MR. JENSEN: Alan, to clarify, this
7 document refers to an appeal, and, for the
8 record, if my recollection is not mistaken, there
9 were at least two appeals, one in 1996 and one in
10 1998.

11 MR. SMITH: Right. That's a good
12 clarification, but it does refer to an order.
13 And there's a question as to what that means, I
14 suppose.

15 BY MR. SMITH:

16 Q. In any case, do you have any idea
17 based on what Floyd and I are discussing here
18 when this meeting might have been held?

19 **A. No idea.**

20 Q. There's a reference to a proposed
21 settlement with Beehive that's discussed and then

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1 rejected. Do you have recollection of that
2 settlement discussion?

3 **A. No.**

4 Q. Do you have recollection of any
5 conversations after the meeting about any such
6 settlement proposal?

7 **A. No.**

8 Q. Do you remember anything about who put
9 forward the proposal at the meeting?

10 **A. No.**

11 Q. Do you have any recollection as to why
12 the proposal was rejected or the discussion that
13 led to rejection?

14 **A. No.**

15 Q. Okay. Number 12.

16 (Wade Deposition Exhibit Number 12 was
17 marked for identification.)

18 BY MR. SMITH:

19 Q. Can you identify Number 12, Mr. Wade?

20 **A. Again, it looks like a set of meeting**
21 **notes from an SMT meeting or conference call.**

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1 Q. And judging from your line there or
2 your name at the end, is it fair to conclude that
3 you prepared these?

4 A. Yes.

5 Q. So is it fair also to conclude then
6 they were 1998 or before?

7 A. It could have been early '99.

8 Q. What does it mean when it says, "Mike
9 Wade reviewed the question of an appropriate
10 response to the BTC request for negotiations
11 under the Telecommunications Act of 1996"?
12 What's being referenced there?

13 A. It means what it says.

14 Q. Do you remember what you said to the
15 group when you made that review?

16 A. No.

17 Q. Do you remember the specific
18 circumstance that prompted that review?

19 A. No.

20 Q. The reference to BTC is a reference to
21 Beehive, correct?

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1 A. Yes, it is.

2 Q. It says that you're going to respond
3 to Beehive with an inquiry, et cetera. Did you
4 make such an inquiry after this meeting?

5 A. I don't remember.

6 Q. Do you remember inquiring to Beehive
7 in writing or conversation about how the
8 Telecommunications Act of 1996 might affect how
9 Beehive uses toll free service?

10 A. No.

11 Q. Okay. Number 13.

12 (Wade Deposition Exhibit Number 13 was
13 marked for identification.)

14 BY MR. SMITH:

15 Q. Can you identify Number 13?

16 A. Again, it appears to be a section of
17 notes from an SMT meeting or conference call.

18 Q. Okay. Do you know whether you were
19 the person who prepared these particular notes
20 that are reflected in Exhibit 13?

21 A. No, I don't.

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1 Q. Where it says, "A readout of the
2 current status of activities related to BTC was
3 provided," do you know who provided that readout?

4 A. No, I don't.

5 Q. It says that there was an agreement to
6 file an appeal on the hearing transcript if
7 necessary, and then there's a reference that a
8 meeting with the appropriate parties could also
9 be scheduled if required. Who are the
10 appropriate parties that are being referenced
11 there?

12 A. I have no idea.

13 Q. Outside of the SMT, who would be
14 considered an appropriate party to include in
15 that type of discussion?

16 A. I have no recollection of what the
17 discussion was about.

18 Q. About the appeal from the hearing
19 transcript. Were there at any time some members
20 of the team who were more concerned or more
21 interested for any reason in the litigation with

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1 Beehive than others?

2 A. There were -- there was some sense I
3 think on the part of U.S. West that they might be
4 closer to the activity because of the proximity
5 with Beehive territory, but I don't know that I
6 would say their team member felt any more
7 involved or less involved than anybody else.

8 Q. So with that discussion in mind, do
9 you have any kind of recollection as to who the
10 appropriate parties would be as referenced in
11 Exhibit 13?

12 A. No.

13 Q. Okay. Do you know of any document
14 outside of Exhibit 13 that would identify what is
15 meant by "appropriate parties" that's used in
16 Exhibit 13?

17 A. No.

18 MR. SMITH: I'm glad we're off of 13
19 since that's an unlucky number, and we're on to
20 14. Number 14.

21 (Wade Deposition Exhibit Number 14 was

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1 marked for identification.)

2 BY MR. SMITH:

3 Q. As the litigation between DSMI and
4 Beehive commenced and continued, who was the US
5 West member on the management team, Mr. Wade?

6 A. **Well, that's changed several times**
7 **over the years.**

8 Q. Who was it in 1996 in May?

9 A. **I don't remember.**

10 Q. Okay. Who's the most recent member in
11 time that you can remember?

12 A. **Ted Fernandez, who's there now.**

13 Q. Okay. And before him?

14 A. **A woman named Tessa Alexander.**

15 Q. Okay. And before Ms. Alexander?

16 A. **I don't remember.**

17 Q. Okay. What type of interest did the
18 U.S. West representative show in the conduct with
19 the litigation between Beehive and DSMI?

20 A. **None any different than anybody else.**

21 Q. Do you remember their attitude toward

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1 the litigation specifically?

2 A. **No.**

3 Q. Do you remember whether Ms. Alexander
4 and Mr. Fernandez shared the same attitude,
5 generally speaking, about the litigation and what
6 course to pursue?

7 A. **I don't recall.**

8 Q. Okay. Are we on 14? Can you
9 identify 14? Thankfully we have a date on this,
10 June 18-19, 1996. Are these more SMS management
11 team minutes?

12 A. **Yes.**

13 Q. Did you prepare these?

14 A. **Probably.**

15 MR. SMITH: Number 15.

16 (Wade Deposition Exhibit Number 15 was
17 marked for identification.)

18 BY MR. SMITH:

19 Q. Can you identify Number 15?

20 A. **It appears to be another set of notes**
21 **from an SMT conference call.**

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1 Q. Did you prepare Exhibit 15, Mr. Wade?

2 A. **Probably.**

3 Q. Who prepared the agendas for the
4 meetings?

5 A. **Usually I did.**

6 Q. And what was the process in putting
7 the agenda together? Did you just invent it in
8 terms of what was on your mind or did you solicit
9 input from other members of the committee?

10 A. **Both.**

11 Q. Was there a standard procedure where
12 that was done, say, a week or two before a
13 meeting or something?

14 A. **The agenda would go out in draft form.**
15 **If there were additions or changes, people would**
16 **let me know.**

17 Q. Was there a manner in which items were
18 ranked on the agenda? Was it like you say your
19 tariff is first come/first served or was it
20 according to some sense of urgency or priority or
21 just catch as catch can?

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1 A. **The only time there was any**
2 **prioritization done was if there were specific**
3 **topics that people wanted to be added and they**
4 **had time constraints or something like that.**
5 **Otherwise, it was just sort of a stream of**
6 **consciousness.**

7 Q. "They had time constraints," meaning
8 there were time constraints to respond to the
9 agenda item or time constraints on the member who
10 was putting that on the agenda?

11 A. **Time constraints on anybody who was**
12 **participating in the meeting. If a particular**
13 **person wanted to be sure they were there for some**
14 **discussion and they could only stay for the**
15 **morning, then we shuffled the agenda.**

16 Q. Where that sort of time and concern
17 was not present, did you rank the items in
18 accordance with any set of the priorities?

19 A. **No.**

20 Q. So the fact that on Exhibit 15 the
21 first item out of the shoot involves Beehive says

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1 nothing in terms of its relative importance on
2 this given date? Is that a fair statement?
3 **A. Yes.**
4 **Q. Okay. Now you see here it's**
5 **referencing -- potential action plans were**
6 **discussed. Do you see that?**
7 **A. Uh-huh.**
8 **Q. What were those?**
9 **A. I have no idea.**
10 **Q. Was one of them that a block of**
11 **numbers, the 629 nine numbers, be assigned to a**
12 **RespOrg?**
13 **A. I have no idea.**
14 **Q. Does that refresh your recollection to**
15 **look at the last sentence in what you've given us**
16 **here on Exhibit 15?**
17 **A. Does it refresh my recollection of**
18 **what?**
19 **Q. Whether one potential action plan was**
20 **to assign the 629 numbers to another RespOrg?**
21 **A. I have no idea.**

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1 **Q. As a block?**
2 **A. I don't think that's what that is**
3 **saying.**
4 **Q. Well, let me say this. One way to**
5 **interpret these minutes is to say -- "Potential**
6 **action plans were discussed. If was stated that**
7 **the assignment of a block of numbers to an**
8 **individual Responsible Organization (RespOrg)**
9 **would require a waiver from the Federal**
10 **Communications Commission." The juxtaposition of**
11 **those sentences might suggest that you discussed**
12 **action plans, somebody said, hey, let's take the**
13 **numbers 629 and all 10,000 of them that we've now**
14 **disconnected, hand them over to another RespOrg,**
15 **that will stop them out there in Utah. Then**
16 **another member raises his hand, and he says, no,**
17 **that would take a waiver from the FCC. That's**
18 **one possible interpretation. Does that refresh**
19 **your recollection of what might have been**
20 **discussed at the meeting reflected in Exhibit 15?**
21 **A. No.**

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1 **Q. Why is the discussion of waiver from**
2 **the FCC taking place in connection with Beehive?**
3 **Did somebody discuss assigning back the 10,000**
4 **numbers that had just been disconnected to**
5 **Beehive back to Beehive but you wanted an FCC**
6 **approval before you did that? Was that what this**
7 **means?**
8 **A. I think you've asked me about three**
9 **times whether I know what the potential action**
10 **plans were, and my answer has been no.**
11 **Q. I'm trying to jog your memory.**
12 **A. Well --**
13 **Q. Since you were the man who had to come**
14 **to Utah and testify, right?**
15 **A. I testified there.**
16 **Q. And this was the day before you**
17 **testified, wasn't it?**
18 **A. I have no idea.**
19 **Q. The hearing was June 13th, was it not?**
20 **A. I don't know.**
21 **Q. Do you remember whether any particular**

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1 **RespOrg was under consideration in terms of this**
2 **block assignment of numbers?**
3 **A. I think you're misstating that again.**
4 **Q. Well, it was stated that the**
5 **assignment of a block of numbers to an individual**
6 **responsible RespOrg would require a waiver.**
7 **A. Right.**
8 **Q. My question is, was there a particular**
9 **RespOrg that was mentioned in this connection?**
10 **A. Again, I think you're misstating it.**
11 **Q. Just to answer --**
12 **A. There was no discussion about whether**
13 **or not -- I don't read this as saying that there**
14 **was a discussion about whether or not it could be**
15 **assigned to this RespOrg or that. The statement**
16 **that says --**
17 **Q. I'm not asking you how you read it.**
18 **I'm asking you whether when you were there this**
19 **reference to RespOrg means that there was a**
20 **discussion of a specific RespOrg at that time.**
21 **Was there such a discussion? That's the**

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1 question.

2 **A. I don't know.**

3 Q. Okay. Now looking back to June 12,
4 1996, and what you knew there about this waiver
5 process that is being discussed in Exhibit 15 --
6 okay? This is as of June 12, 1996. Do you know
7 who would have been approached at the FCC to
8 obtain such a waiver as it's being noted here?

9 **A. Again, I disagree with your premise.**

10 Q. We're okay on this. I'm not implying
11 that necessarily this was done, okay? My
12 question is different. My question is -- there's
13 a reference here to obtaining a waiver. I'm
14 inferring that a waiver process is available.
15 I'm asking, do you know if that process is
16 available who the contact person at the FCC would
17 have been in June of 1996?

18 **A. And I don't know anything about a
19 waiver process to handle this.**

20 Q. Okay. Prior to June 1996, had you
21 ever been involved in seeking such a waiver from

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1 the FCC?

2 **A. No.**

3 Q. Have you had any experience with such
4 a waiver process since that time?

5 **A. No.**

6 Q. Okay. Do you remember what member at
7 the meeting on June 12, '96, made this comment
8 which is reflected in your last sentence of these
9 minutes, which is Exhibit 15?

10 **A. No.**

11 Q. Do you remember raising your eyebrows
12 when the comment was made thinking to yourself,
13 I've never heard of such a waiver thing?

14 MR. JENSEN: He's testified already he
15 doesn't recall the discussions, so how could he
16 recall whether his eyebrows were raised?

17 MR. SMITH: He may have recalled that
18 physical sensation. Sometimes that's what we
19 recall. We may not recall things intellectually,
20 but something to do with our body like a gasp or
21 a feeling --

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1 MR. JENSEN: The premise of your
2 question assumes that he recalls that there was
3 such a statement made, and he's already testified
4 he does not recall such a statement being made.

5 MR. SMITH: He wrote these minutes.
6 There's some indication that something like that
7 was discussed. I'm just wondering whether you
8 had some emotional feeling that was now subject
9 to recall. I don't remember what my first date
10 said to me, but I remember how I felt in her
11 presence. You see? That's the distinction I
12 made. Sometimes these things help us to
13 remember. Memory is a tricky thing.

14 All right. This is 16 and this is 17.
15 (Wade Deposition Exhibit Numbers 16-17
16 were marked for identification.)

17 BY MR. SMITH:

18 Q. Now Number 16, just for the record,
19 Mr. Wade, that's more management team minutes,
20 right?

21 **A. It appears so.**

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1 Q. And involving the Beehive/DSMI
2 litigation, correct?

3 **A. Yes.**

4 Q. Now I assume that -- well, you tell me
5 if I'm right. That when you put together this
6 document production that you gave to Mr. Lukas
7 and I today that you got all of the DSMI board of
8 director's meeting minutes in the same package of
9 documents that you delivered to us, correct?

10 **A. I believe all the documents where
11 Beehive is discussed.**

12 Q. I'm going to be able to go through
13 this stack of documents sitting in front of me
14 and I'll see all of the references to the
15 management team discussions about Beehive and
16 DSMI litigation, and at the same time I'll see
17 the place and time when DSMI's board of directors
18 reviewed the same things; is that correct?

19 **A. Yes.**

20 Q. And I'll be able to compare the
21 frequency of discussion between the two groups,

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1 correct, from these minutes? Now looking at
2 what's been marked as Exhibit Number 17, can you
3 identify Number 17?

4 **A. It says it's a listing of toll free**
5 **numbers.**

6 Q. Okay. And did DSMI provide this in
7 connection with a FCC proceeding involving
8 Beehive and DSMI or involving the SMS/800 tariff?

9 **A. I have no idea where this is from.**

10 Q. Can you identify from the printout
11 sheet who the preparer was of Exhibit Number 17?

12 **A. No.**

13 Q. Okay. Does the printout sheet look
14 like it is generated from DSMI's offices?

15 **A. No.**

16 Q. Can you tell from which office it
17 might be generated, say, Telcordia or an RBOC?

18 **A. No.**

19 Q. Do you recognize the code designations
20 on this document, which is Exhibit 17?

21 **A. Which code designations?**

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1 Q. Well, looking at the printout portion
2 after the cover letter and starting with the
3 first page after the cover letter -- are you with
4 me?

5 **A. Uh-huh.**

6 Q. At the top it says "Dial Number."
7 That's the applicable 629 number?

8 **A. Correct.**

9 Q. Then it gives us the status, right?

10 **A. Right.**

11 Q. Working or unavailable. You've talked
12 about those in the deposition, right?

13 **A. Right.**

14 Q. It says "RO." That's, I take it, the
15 RespOrg code, correct?

16 **A. Probably. It looks like it.**

17 Q. Well, you see the ATX01 down there.
18 Isn't that AT&T as you earlier testified?

19 **A. Right.**

20 Q. It says "Comments." Do you see that?

21 **A. Right.**

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1 Q. And the first one from the top says,
2 "The SMS/800 HD made EMRG. RO change BRD01 to
3 LGT01 on," and then the typing shifts over to the
4 far left, "2/13/97." Do you see that?

5 **A. Uh-huh.**

6 Q. Do you know what that means?

7 **A. Do I know what means?**

8 Q. What I just read. HD, for example?

9 **A. I assume that's help desk.**

10 Q. Okay. EMRG., emergency?

11 **A. Emergency RespOrg change.**

12 Q. BRD01, is that a RespOrg code?

13 **A. It fits the format.**

14 Q. The LGT01, is that a RespOrg code.

15 **A. Again, it fits the format.**

16 Q. And the change effected on February
17 13, '97, correct?

18 **A. There wasn't a question there.**

19 Q. No, I asked correct, question mark.

20 **A. Is what correct?**

21 Q. It says --

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1 **A. You read it to me. Is that --**

2 Q. Is that what this signifies?

3 **A. Well, I'm guessing. Like I said, I**
4 **haven't seen this document before or not that**
5 **I remember anyway. It looks like it says**
6 **there was an emergency RespOrg change**
7 **February 13, '97.**

8 Q. Could this document have been
9 generated by the help desk?

10 **A. It could have been.**

11 Q. Didn't you tell me earlier that help
12 desk was primarily responsible, if not
13 exclusively responsible, for subscriber changes
14 of RespOrgs?

15 **A. Right.**

16 Q. So you have never seen Exhibit 17
17 before?

18 **A. I don't have any recollection of**
19 **seeing it before.**

20 MR. SMITH: Okay. Number 18.

21 (Wade Deposition Exhibit Number 18 was

Deposition of Michael Wade

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1 marked for identification.)
 2 BY MR. SMITH:
 3 Q. Now before we broke for lunch,
 4 Mr. Wade, I was asking you about the policeman
 5 responsibility, if any, that DSMI might have as
 6 far as the RespOrg subscriber relationship and
 7 what a RespOrg could charge a subscriber in their
 8 contractual relationship and so forth. Is there
 9 anything in the SMS/800 tariff that would forbid
 10 a RespOrg from charging zero dollars under its
 11 contractual relationship with a subscriber so
 12 long as the RespOrg paid the applicable tariff
 13 rate or assignment of the numbers to the RBOCs
 14 under the tariff?
 15 A. The SMS/800 tariff doesn't impact that
 16 relationship.
 17 Q. Okay. Do you have Number 18?
 18 A. Yes.
 19 Q. Now are these more management team
 20 minutes?
 21 A. They appear to be.

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1 Q. And were they prepared by you?
 2 A. Probably.
 3 Q. Okay. I notice here under paragraph 2
 4 towards the bottom of the page -- in fact, it's
 5 the second -- well, it's the penultimate
 6 paragraph on Bates stamp 92. "Agreement:
 7 US West agreed to take the lead in filing the
 8 complaint against BTC." Is that Beehive?
 9 A. Yes.
 10 Q. What complaint is being referenced
 11 there?
 12 A. I have no idea.
 13 Q. This is discussed in the paragraph
 14 above. "The question of what company should file
 15 the planned complaint against BTC was also
 16 discussed." Do you also see that?
 17 A. Yes.
 18 Q. What complaint are they talking about
 19 here that's being planned?
 20 A. I have no idea.
 21 Q. In March 5, 1996?

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1 A. I have no idea.
 2 Q. Was it the complaint that ultimately
 3 was filed by DSMI?
 4 MR. JENSEN: The question has been
 5 asked and answered.
 6 MR. SMITH: I'm trying to refresh his
 7 recollection to see if that jogs it.
 8 THE WITNESS: I have no idea.
 9 BY MR. SMITH:
 10 Q. This says, "Action." What does that
 11 signify at the very bottom of Exhibit 18? Is
 12 that the action that's been directed by the
 13 management team?
 14 A. It indicates an action item that was
 15 assigned.
 16 Q. We've talked now, this is to be done.
 17 Is that what it means?
 18 A. It indicates an action item that was
 19 assigned.
 20 Q. You were assigned, according to
 21 Exhibit 18, to assure that an informal contact is

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1 made with BTC in advance of the filing of any
 2 formal complaint. Do you know what that was?
 3 A. No.
 4 Q. Do you know whether you did it?
 5 A. No.
 6 Q. Where's the rest of this item? It
 7 says, "The purpose of the informal," and then
 8 it's cut off. There's another page. May we get
 9 that, please?
 10 MR. JENSEN: Yes.
 11 MR. SMITH: Okay. That was 18.
 12 Now 19.
 13 (Wade Deposition Exhibit Number 19 was
 14 marked for identification.)
 15 BY MR. SMITH:
 16 Q. Okay. What is Number 19?
 17 A. It appears to be a section from SMT
 18 notes again.
 19 Q. Okay. Can you tell from the context
 20 what the date of Exhibit 19 is?
 21 A. No.

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1 Q. Can you tell from the context who
2 prepared Exhibit 19?
3 A. No.
4 Q. This references an agreement, "SMT
5 members" and I'm quoting, "agreed to initiate
6 legal action against Beehive Telephone Company
7 (BTC) to recover the outstanding balance due on
8 the BTC account. SMT members also agreed to the
9 'allocation' of numbers currently listed under
10 the BTC RespOrg identification code." From that
11 context, isn't it fair to conclude that
12 Exhibit 19 precedes the complaint that DSMI filed
13 against Beehive in the summer of 1996?
14 A. I don't know when this action would
15 have occurred. It would have been early on.
16 Q. Well, what other suit has been filed
17 to your knowledge against BTC for a balance due
18 on an account that involves DSMI?
19 A. There's only one, I think.
20 Q. And wasn't that in March or April of
21 1996 or thereabouts?

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1 A. I don't recall.
2 Q. Okay. Isn't that the complaint that
3 was filed in Federal District Court in Utah?
4 A. I believe that's where it was filed.
5 Q. Are you aware of any other filing for
6 collection of an account against Beehive?
7 A. No.
8 Q. All right. What does it mean when it
9 says, "SMT members also agreed to the
10 'allocation' of numbers currently listed under
11 the BTC RespOrg identification code"?
12 A. In the tariff there is a process
13 defined for the handling of numbers once they
14 don't have a valid RespOrg associated with them
15 any longer.
16 Q. Okay. Is that what was discussed at
17 the meeting that's reflected in Exhibit 19?
18 A. Evidently.
19 Q. Do you know?
20 A. No.
21 Q. Can you remember?

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1 A. No.
2 Q. Okay. Do you remember whether the
3 allocation discussion specifically referenced
4 whatever is in the tariff?
5 A. No.
6 Q. Do you remember what section of the
7 tariff deals with this so-called allocation
8 method?
9 A. No.
10 Q. Do you remember who brought up the
11 idea of allocating Beehive's 629 numbers?
12 A. No.
13 Q. Do you remember what was proposed in
14 terms of who got what in the allocation process?
15 A. No.
16 Q. Do you remember whether any of the SMT
17 members or the RBOC with which they're affiliated
18 are RespOrgs at this time? By "this time," I
19 mean the summer of 1996.
20 A. I think they've all been RespOrgs
21 since the beginning.

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1 Q. Okay. Do you remember whether there
2 was a discussion that any of the RBOCs acting as
3 RespOrgs would get an allocation of the 629
4 numbers?
5 A. No.
6 Q. In the summer of 1996, isn't it true
7 that the pool of 800 numbers was nearing
8 exhaustion, in fact, even before that time?
9 A. I'm not sure exactly when we opened
10 888.
11 Q. Weren't you discussing --
12 A. Probably '96. I think that may be
13 right.
14 Q. Even before 1996, the upcoming
15 exhaustion of 800 numbers and what to do about
16 it?
17 A. If 888 was opened in '96, then
18 probably in early '96 or late '95 there were
19 discussions, yes.
20 Q. In any of your meetings with the SMT
21 in 1995 and 1996, did you hear a discussion about

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1 the dwindling supply of 800 numbers, Beehive's
2 handling of 10,000 of these, and what to do about
3 recapturing those to get them back into this
4 pool? Was that kind of discussion had with your
5 SMT group?

6 **A. Those are three unrelated topics.**

7 Q. Well, I'm wondering whether you
8 discussed them in relationship to each other at
9 any time during your SMT meetings?

10 **A. Not that I recall.**

11 Q. Okay. Is that because the 10,000 held
12 by Beehive are such a small fraction of the
13 overall numbers that that relationship is not
14 important?

15 **A. I can't respond to that.**

16 Q. Okay. But you can't remember that
17 there was no discussion of those three things in
18 relationship to each other at any of these SMT
19 meetings in 1995 and 1996?

20 **A. I didn't recall any joint discussion**
21 **of those three topics.**

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1 Q. If there had been such a discussion,
2 would it be reflected in the minutes somewhere?

3 **A. Probably at least at a high level.**

4 Q. And haven't you given us all copies of
5 the minutes that are related to Beehive Telephone
6 Company?

7 **A. Yes.**

8 MR. JENSEN: Do you want to take
9 another break?

10 MR. SMITH: Do you need a break.

11 MR. JENSEN: If you need one.

12 MR. SMITH: Sure.

13 (Pause in the proceedings.)

14 BY MR. SMITH:

15 Q. Okay. Mr. Wade, when Beehive first
16 made its motion to cite DSMI for contempt before
17 Judge Kimball earlier this year, your counsel
18 submitted a request to the court to postpone any
19 consideration of the contempt matter pending the
20 outcome of proceedings before the Federal
21 Communication Commission. You were aware of

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1 that, I suppose?

2 **A. I don't know if that's -- I think that**
3 **is accurate.**

4 Q. Did they send copies of their
5 pleadings to you for your review?

6 **A. I've seen copies of it.**

7 Q. There was a representation made in the
8 motion papers seeking continuance that the FCC
9 was predicted to decide what's in its current
10 docket involving Beehive no later than the fall
11 of this year. Did you read that when you read
12 the papers?

13 **A. That -- I'm sorry?**

14 Q. That particular prediction.

15 **A. In the papers that --**

16 Q. The gist of it was, Judge Kimball, you
17 can put off hearing the contempt matter because
18 the FCC shortly will rule and that will take care
19 of things and they're going to rule no later than
20 X month in 2000. That was the gist of what was
21 said. Do you remember reading that or something

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1 like that?

2 **A. I don't recall specifically, but --**

3 Q. Do you have any knowledge concerning
4 the basis of this prediction in those motion
5 papers that your company had its counsel file
6 with the court in Utah?

7 **A. I'm sorry. Say that again. Do I have**
8 **any --**

9 Q. Do you have any knowledge respecting
10 the basis or the ground for making that
11 prediction?

12 **A. Some.**

13 Q. Okay. What is that basis? What is
14 the basis of your knowledge in that regard?

15 **A. We had been at the Commission for a**
16 **discussion about -- what were we there**
17 **discussing? It doesn't matter. Performance**
18 **issues, I think it was. But during that**
19 **discussion with the Commission, some of the**
20 **Commission staff stated they expected to have an**
21 **order out this summer. I believe it was what**

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1 they said at the time, June, July, August time
2 frame.

3 Q. Who was present at that meeting when
4 you heard that?

5 A. From who? From what companies?

6 Q. Who was present? What individuals?

7 A. Oh, there was probably a dozen of
8 them. I don't know half the names.

9 Q. You were there?

10 A. I was there; Marie Breslin was there
11 from Bell Atlantic; Ellen Oteo was there from
12 Bell Atlantic.

13 Q. Who were the Commission staff?

14 A. Marty Schwimmer was there from the
15 Commission; Les Seltzer, I believe, was there.

16 Q. Anybody from Beehive there?

17 A. No.

18 Q. Okay. Was Mr. Lukas there?

19 A. No.

20 Q. Okay. So you were there and other
21 members of the SM team or representatives of the

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1 RBOCs, your counsel were there, the indicated
2 Commission staff were there. Anybody else that
3 you can remember?

4 A. I'm not sure if counsel was there.

5 Q. Your counsel weren't there? Any RBOC
6 counsel there?

7 A. I don't think so.

8 Q. What was the context of the
9 discussion? Why did the subject of the timing of
10 the ruling come up?

11 A. I don't recall. I believe somebody
12 just asked them what the status was of the order.

13 Q. Okay. What else was said, if
14 anything?

15 A. About?

16 Q. About the order, the proceeding.

17 A. That's all that I remember.

18 Q. Okay. So you don't remember anything
19 else being said from your side? Do you remember
20 anything else being said from the Commission
21 side, the staff side?

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1 A. No.

2 Q. Okay. Can you remember where the
3 meeting occurred, what building?

4 A. At the portals building.

5 Q. When and what month?

6 A. I would guess May.

7 Q. May of 2000?

8 A. Yes.

9 Q. Okay. You say you were down there on
10 a particular item of business yourself, a
11 performance review. Is there a docket connected
12 with that?

13 A. No, I don't think so.

14 Q. Okay. Was it just an informal
15 meeting?

16 A. It was -- I'm not sure what that
17 means.

18 Q. It didn't arise out of any particular
19 docket? It involved something less than a formal
20 matter before the Commission?

21 A. It was driven by concerns that had

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1 been expressed by some of the industry players
2 about the performance of the links between the
3 SMS and the SCP.

4 Q. SCP?

5 A. Right.

6 Q. What does that stand for?

7 A. Service Control Point.

8 Q. What were the expressed concerns that
9 came to the calling of this meeting?

10 A. That the performance was slow, records
11 were not being downloaded as quickly as they
12 should be.

13 Q. Who had expressed the concern?

14 A. MCI, Sprint, and AT&T, I believe.

15 Q. Were representatives from those
16 companies there at this meeting you described?

17 A. No.

18 Q. Did you have a good vacation?

19 A. Fair.

20 Q. Where did you go?

21 MR. JENSEN: I'll object. There's

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1 really no reason to get into where he went on his
2 personal vacation.

3 BY MR. SMITH:

4 Q. Just curious.

5 A. A couple of day trips.

6 Q. Now you mentioned that the RBOCs have
7 all been RespOrgs from the beginning, correct?

8 A. Yes.

9 Q. And do the RBOCs also subscribe to any
10 of these numbers?

11 A. I wouldn't know that.

12 Q. Why wouldn't you know that?

13 A. Why would I know that? How would I
14 know that?

15 Q. You just don't look into those things,
16 who the subscribers are in relation to any
17 particular RespOrg?

18 A. No.

19 Q. You've never done that with an RBOC
20 acting as RespOrg? You've never double checked
21 on an RBOC as RespOrg and who their subscribers

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1 might be?

2 A. The system doesn't maintain subscriber
3 information for most of the records that are in
4 it.

5 Q. Okay. You've never looked after
6 RBOCs/RespOrg subscriber relationships and
7 whether they have bona fide business needs for
8 the numbers that they have; is that true?

9 A. That's true.

10 Q. You don't monitor the RBOC/RespOrg
11 subscribers at any time since you became
12 president of DSMI to check on how many calls are
13 going through those numbers or what use is being
14 put of those numbers?

15 A. We have no way of knowing that
16 information.

17 Q. Okay. What financial incentives are
18 present to an RBOC acting as a RespOrg in terms
19 of taking in an assignment of numbers and putting
20 them to use with subscribers? How would they
21 make money on that deal?

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1 A. I have no idea what you're asking me.

2 Q. Well, they're not in this business
3 just out of the goodness of their hearts and to
4 do service for the common good, and -- they're in
5 it to make money, aren't they?

6 A. The RBOCs?

7 Q. Yes, serving as RespOrgs.

8 A. I assume that's the reason every
9 RespOrg is in service.

10 Q. How did these RespOrgs/RBOCs make
11 money?

12 A. That's not our end of the business.

13 Q. The SMI doesn't care, okay. Do you
14 know from your personal experience in the
15 industry what financial incentives are there for
16 them to go out and use these numbers for the
17 subscribers?

18 A. No.

19 Q. You have no idea?

20 A. None.

21 Q. None whatsoever?

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1 A. None.

2 Q. If they had a real popular number
3 because it was a vanity number and it had a lot
4 of traffic on it and that traffic flowed over
5 their lines, would that be a financial incentive
6 that might induce them to place those numbers?

7 A. To place what numbers?

8 Q. The toll free numbers.

9 A. That's not a question of whether they
10 want to place it. The question is who the
11 subscriber wants as their carrier.

12 Q. But isn't practice at work why the
13 RespOrg is going out and hustling and drumming up
14 business and getting subscribers?

15 A. I have no idea.

16 Q. Because you don't monitor that?

17 A. We're not connected with that end of
18 the service.

19 Q. Now is that considered selling or
20 marketing numbers when an RBOC/RespOrg goes out
21 and gets subscribers to use the numbers within

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1 the meaning of this language that you keep
2 putting in your affidavits and that Floyd keeps
3 quoting in his briefs? Marketing, I think, is
4 the word.
5 **A. I have no idea what you're talking**
6 **about.**
7 Q. Because you don't look at that
8 relationship when an RBOC as RespOrg takes an
9 assignment of numbers. At that point you don't
10 go looking at them to see if they're marketing or
11 selling or brokering or exploiting or anything of
12 the sort, do you, at DSMI?
13 **A. We don't monitor the relationship**
14 **between RespOrgs and their subscribers or any**
15 **RespOrgs.**
16 Q. How about at the SMT? Do you do it
17 there?
18 **A. Do we do what there?**
19 Q. Look at the RespOrg subscriber
20 relationship to see if there's any abuse of the
21 numbers in that relationship?

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1 **A. No.**
2 Q. Okay. Is it true to say that certain
3 of the 800 numbers have more exploitative value
4 than the 888 or other serial numbers?
5 MR. JENSEN: I'll object. I don't
6 think you've established a foundation for him to
7 give an opinion.
8 MR. SMITH: He's dealt with number
9 portability for 20 years at Bellcore and at DSMI.
10 He's at the center of that industry.
11 BY MR. SMITH:
12 Q. You don't know anything about the
13 financial inducements or values attributable to
14 these numbers?
15 MR. JENSEN: Let me restate the
16 objection just for the record. I think your
17 question is asking him to provide an opinion on a
18 subject that he has not been qualified as an
19 expert on. He's not being offered as an expert
20 on that subject, so I don't think he can give his
21 opinion on it.

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1 BY MR. SMITH:
2 Q. Okay. That's the objection. What's
3 your answer to the question?
4 **A. What was the question?**
5 Q. What I'm driving at, Mr. Wade, is that
6 at a hearing attended by myself and Floyd in
7 front of Judge Jenkins, Floyd indicated the
8 possibility that some of these 800 numbers, like
9 those in the 629 series, might have more value
10 than some in the later series. I'm trying to get
11 at the foundation for that and whether it came
12 from your end of the thing or from someplace
13 else.
14 MR. JENSEN: It sounds like I should
15 be the deponent for that kind of a question.
16 MR. SMITH: I don't want to ask you,
17 but I do want to ask Mr. Wade.
18 THE WITNESS: I don't have any
19 information on valuations associated with
20 numbers.
21 BY MR. SMITH:

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1 Q. What I've been hearing from you now --
2 and I've really belabored this point, and I have
3 to apologize to some extent because I know it's
4 been boring, but -- and Floyd may object because
5 I'm going to characterize your testimony, but
6 he'll object if he wants to. You don't monitor
7 the RespOrg subscriber relationship; you don't
8 have any responsibility for that; you never have;
9 you don't know what the financial situations are
10 that drive that relationship and that induce
11 those kind of contracts and whatever terms that
12 are negotiated there; you just don't have any
13 experience and you don't have any qualifications
14 to look at that. That's what I'm hearing. Is
15 that a fair statement?
16 **A. I'm not sure I would phrase it that**
17 **way.**
18 Q. I know it was sort of rhetorical, but
19 is the substance of what I've said in terms of
20 the description of your experience and your
21 responsibilities at DSMI true?

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1 A. Our responsibilities have to do with
2 the SMS/800 tariff, which is not impacted or does
3 not impact RespOrg subscriber relationships.

4 Q. And you don't know what business needs
5 or financial concerns would be at the core of the
6 subscriber-RespOrg relationship?

7 A. It's not our part of the business.

8 Q. Okay. So you don't know? Is that a
9 fair statement?

10 A. That's fair.

11 Q. Okay. What procedures are followed at
12 DSMI to ensure that there is no human
13 intervention in terms of computer programming to
14 impact the ideal neutral administration of
15 numbers through the DSMI database?

16 A. I don't understand that question.

17 Q. Let me give you an analogous
18 situation. This is real simple and just
19 analogous. Ski resort, you got people giving
20 lift tickets, selling tickets, cash is here, cash
21 is there, credit cards, whatever. There's money

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1 afloat. An accounting firm will come in, and it
2 will say, here are cash control protocols under
3 accepted accounting practices and if you follow
4 these you won't lose cash or you won't lose as
5 much. Now what do you do at DSMI to keep your
6 computer from losing numbers because somebody
7 with a bias gets in there and changes the
8 programming? Is there a set of written protocols
9 that protect your database against that kind of
10 human impact?

11 A. Are you talking about intervention on
12 the part of a vendor or intervention on the
13 part --

14 Q. On the part of anybody.

15 A. Well, "anybody" is such a broad
16 question. How do you answer that?

17 Q. You answer it by telling me whether
18 you have a written procedure that keeps this
19 computer database pure.

20 A. We believe the database is secure,
21 yes.

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1 Q. What is the procedure that
2 accomplishes that?

3 A. In terms of what aspect.

4 Q. In terms of any aspect?

5 A. That's too broad to answer.

6 Q. Well, is there something written down
7 someplace?

8 A. There are lots of things written down
9 lots of places.

10 Q. Well, start for me. Where are they
11 written down?

12 A. Where -- what are we talking about
13 here?

14 Q. Procedure to prevent human
15 intervention in polluting the database?

16 A. There are a variety of security
17 manuals that are written and in place that deal
18 with kinds of things that people need to do to
19 get access to the system. There are quality
20 measures that are in place and quality processes
21 that are in place to ensure the software is

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1 tested and debugged.

2 Q. Periodic checking?

3 A. Periodic checking of what?

4 Q. Of whether these precautionary
5 measures are working.

6 A. Yes.

7 Q. Okay. How often?

8 A. At least annually. More frequently in
9 certain areas.

10 Q. Okay. The areas that are checked with
11 greater frequency, are those the areas thought to
12 be more vulnerable?

13 A. I don't think we have vulnerable
14 areas. We do our best to make sure that we
15 don't.

16 Q. Why do you check some more frequently
17 than others?

18 A. Some are tied to software releases.
19 Every time we put a software release in it, we
20 run it through the test. Some are tied to vendor
21 audits. They come up as vendor audits are

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1 performed.

2 Q. What procedures do you have in place
3 to prevent slamming?

4 A. **Slamming is not a software issue.**
5 **Procedures that are in place with the industry**
6 **are that anytime a RespOrg change comes in, it**
7 **has to be signed off on, as we went through**
8 **before, based on the industry guidelines.**

9 Q. That's your service desk, right?

10 A. Yes.

11 Q. You don't watch after that, correct,
12 at DSMI?

13 A. **Don't watch out for what?**

14 Q. The service desk.

15 A. **We provide day-to-day oversight for**
16 **them.**

17 Q. For the service desk?

18 A. Yes.

19 Q. I thought that contract was with the
20 RBCCS.

21 A. It is.

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1 Q. And that you had limited involvement
2 there.

3 A. **We do.**

4 Q. You do have limited involvement?

5 A. **Right.**

6 Q. Okay. I notice in your tariff -- does
7 a RespOrg pursuant to the terms of the SMS/800
8 tariff have any obligations to keep its
9 subscriber information confidential? The
10 RespOrg?

11 A. **Do they have to keep their subscriber**
12 **information confidential?**

13 Q. Yes.

14 A. **I don't know specifically.**

15 Q. How about paragraph 2.3.1? Do you
16 have that memorized?

17 A. No.

18 Q. I'm sorry. This is such a bulky thing
19 that I only have one copy. May I show you what
20 I'm looking at here?

21 MR. LUKAS: I have a copy.

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1 BY MR. SMITH:

2 Q. 2.3.1 on page 24.

3 A. **Thank you.**

4 Q. Do you see at the bottom of that page,
5 which is under the heading "General
6 Responsibilities" which is referring to RespOrgs?

7 A. **Uh-huh.**

8 Q. It says, "Treat all subscriber
9 information as confidential unless otherwise
10 instructed by the subscriber."

11 A. **Uh-huh, yes.**

12 Q. In your experience as president of
13 DSMI, have you ever had occasion to apply this
14 provision of the tariff?

15 A. **Not to my knowledge.**

16 Q. Did you consider paragraph 2.3.1 of
17 the tariff in your drafting of the form that you
18 required Beehive to submit for access to the 629
19 numbers in your January 2000 letter to Mr. Art
20 Brothers?

21 A. **I don't remember specifically.**

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1 Q. You don't remember whether you
2 considered this part of the tariff?

3 A. **Correct.**

4 Q. Would you be concerned if you were
5 engaged in conduct that invited others to
6 disregard or breach the tariff? By "tariff," I
7 mean the SMS/800 tariff.

8 A. **I'm sorry. Say that again.**

9 Q. Would you be concerned if you were
10 engaged in conduct that invited someone to breach
11 the tariff?

12 MR. JENSEN: I'll object. I think
13 you're asking him to speculate.

14 MS. TUCKER: It also calls for a legal
15 conclusion.

16 BY MR. SMITH:

17 Q. Go ahead and answer.

18 A. **That sounds like it's a legal question**
19 **that I don't know the answer to.**

20 Q. What's your understanding of the
21 conduct or responsibility as a lay person in that

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1 regard?

2 **A. My understanding is I would be**
3 **responsible for my behavior.**

4 Q. That's my question. What if your
5 behavior is inviting another to disregard a
6 tariff?

7 MR. JENSEN: Same objection.

8 THE WITNESS: And I think I responded.
9 I'm responsible for my behavior.

10 BY MR. SMITH:

11 Q. If there's a subscriber out there with
12 a toll free number and wants to change RespOrgs
13 and would like to know what's a good change to
14 make and they call your office, what do you say?

15 **A. We don't provide that information.**

16 Q. Okay. Where do you send them?

17 **A. We don't.**

18 Q. How do they find out who's an
19 available RespOrg for that change?

20 **A. Well, any RespOrg is an available**
21 **RespOrg.**

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1 Q. How do they know who's available,
2 though, where to go? You don't touch that?

3 **A. No.**

4 Q. You turn them away?

5 **A. If they ask for a specific company**
6 **name, we can give them a contact name. But if**
7 **they don't, then we just --**

8 Q. How about if that kind of request
9 comes to the SMT?

10 **A. I assume it's the same thing.**

11 Q. Do you know?

12 **A. No.**

13 Q. Have you ever had any experience with
14 that kind of situation at the SMT level?

15 **A. I wouldn't have that experience at the**
16 **SMT level. I'm not a member of the SMT.**

17 Q. What's the procedure under the tariff
18 when a RespOrg becomes inactive and numbers come
19 back into the pool as a consequence but there is
20 no RespOrg as a substitute designated by that
21 subscriber?

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1 MR. JENSEN: You're asking him to
2 recite what the tariff says. I would object that
3 the tariff speaks for itself.

4 BY MR. SMITH:

5 Q. Tell me what the practice is at DSMI
6 in that kind of situation.

7 **A. When -- what's the situation, again,**
8 **here?**

9 Q. RespOrg becomes inactive.

10 **A. Inactive, meaning they've been**
11 **disconnected?**

12 Q. Can't have access to the database.

13 **A. Okay.**

14 Q. So subscribers are without their ronin
15 samurai. They need a new RespOrg, but they
16 haven't picked one. What is the practice at DSMI
17 to reassign those numbers?

18 **A. I'm not a hundred percent versed on**
19 **the specifics of it, but there was a process that**
20 **was worked out with the industry whereby all of**
21 **the RespOrgs are notified of the fact that there**

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1 **is numbers in such a situation, and they're given**
2 **a period of time to try and contact those**
3 **customers to see if they can influence that**
4 **subscriber to change their RespOrg or to take**
5 **them on as a new RespOrg.**

6 Q. And that's not marketing, I guess,
7 when that happens?

8 **A. That's your term you're using. I was**
9 **describing the process for dealing with the**
10 **numbers.**

11 Q. According to the DSMI practice, that
12 sort of solicitation under those circumstances by
13 a RespOrg wouldn't be considered marketing or an
14 unlawful solicitation, I suppose?

15 **A. That's an industry-agreed process**
16 **that's in place. They're given a certain length**
17 **of time to make the contact, to deal with the**
18 **numbers, whatever they want to do. If at the**
19 **length of that time interval there are numbers**
20 **still remaining that have not been changed,**
21 **they're disconnected.**

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1 Q. Okay. Now when you say this industry
2 guideline or process, is there a specific group
3 you have in mind that's the formulator of that?

4 A. **We take most of the industry**
5 **interactions through the SNAC.**

6 Q. What does that stand for?

7 A. **SMS/800 Number Administration**
8 **Committee.**

9 Q. Who's on that committee?

10 A. **Companies that choose to participate**
11 **in the ATIS forum structure.**

12 Q. What does ATIS stand for?

13 A. **Alliance for Telecommunications**
14 **Industry Solutions, I believe.**

15 Q. So anybody who is a member of the ATIS
16 can get on the SNAC?

17 A. **I believe that's right.**

18 Q. It's just an open forum so long as
19 you're an ATIS guy; is that true?

20 A. **I believe that's true.**

21 Q. Okay. And the SNAC sits down and it

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1 formulates guidelines to deal with certain
2 aspects of numbering administration; is that
3 true?

4 A. **The charter of the SNAC is to deal**
5 **with issues related to the SMS/800.**

6 Q. And do they take a vote of the
7 committee as a whole on these type of
8 resolutions?

9 A. **All of the ATIS groups work on what**
10 **they call a consensus process.**

11 Q. So there's more than one group like
12 SNAC that's affiliated with ATIS, correct?

13 A. **Correct.**

14 Q. Okay. And SNAC, like all of these
15 ATIS-affiliated groups, works on a consensus
16 basis, which means everybody has got to agree
17 before a certain guideline is adopted?

18 A. **They define consensus themselves. I'm**
19 **not sure what their definition is.**

20 Q. There's a formula determining
21 consensus, but once it's reached, they promulgate

Page 287

1 a guideline, correct?

2 A. **Correct.**

3 Q. Okay. And then what is the
4 relationship of that guideline to DSMI?

5 A. **That guideline -- since ATIS**
6 **agreements are voluntary by nature, that's**
7 **reviewed then with the RBOCs and the SMT. If**
8 **they choose to implement it as a policy that**
9 **people should follow and their vendor structure**
10 **should follow, then it's implemented.**

11 Q. Okay. So SNAC by consensus proposes a
12 guideline, but DSMI doesn't do anything about it
13 unless it gets approval from STM?

14 A. **SMT.**

15 Q. SMT, correct.

16 A. **Uh-huh, that's correct.**

17 Q. And so SMT is sort of in charge of
18 approving those kinds of guidelines and seeing if
19 they're implemented in your system; is that
20 correct?

21 A. **It's not a DSMI system. It's an RBOC**

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1 **system.**

2 Q. The whole thing, the help server, the
3 database, everything, correct?

4 A. **Correct.**

5 Q. Before that's done in practice
6 historically, does the SMT get approval from the
7 FCC?

8 A. **It depends on what the topic is.**

9 Q. Okay. This RespOrg change that
10 started this discussion, was that approved by the
11 FCC before it was implemented?

12 A. **The ability to make RespOrg changes?**

13 Q. To make them under the circumstances
14 that I just hypothesized to you at the beginning
15 of this particular segment of the deposition.

16 A. **The allocation portion of that, that**
17 **was approved by the Commission as part of the**
18 **SMS/800 tariff.**

19 Q. In your experience as president of
20 DSMI, have you ever had an occasion where a
21 guideline has been recommended by SNAC and

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1 adopted by the management team which is
2 inconsistent or potentially inconsistent with the
3 tariff?

4 **A. Not that I'm aware of.**

5 Q. Has that subject ever come up in any
6 meetings at DSMI or the SMT. hey, if we adopt
7 this particular guideline it may be inconsistent
8 with the tariff, that sort of discussion?

9 **A. My guess is yes, but I can't remember**
10 **any specific cases.**

11 Q. Can you remember what was done in
12 those cases to deal with that apparent
13 inconsistency?

14 **A. No. Well, I mean, I can't remember**
15 **any specific cases, so I wouldn't have any idea**
16 **what was done.**

17 Q. The way that the RespOrgs access the
18 DSMI database to get an assignment of a toll free
19 number that we've talked about is all
20 computerized and so forth, right?

21 **A. Correct.**

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1 Q. Is that access procedure embraced in
2 the SMS/800 tariff?

3 **A. I have no idea what you mean by**
4 **"embraced."**

5 Q. Well, is it -- not embraced, but is it
6 mandated by the tariff?

7 **A. As I understand it, tariffs don't**
8 **mandate things. They offer options that you can**
9 **purchase or not purchase.**

10 Q. On such and such terms?

11 **A. Right. There are a variety of access**
12 **options contained in the tariff.**

13 Q. Okay. And are all of them neutral in
14 the sense that there's no human intervention, it
15 just is mechanized through the database?

16 **A. Correct.**

17 Q. That characterizes -- that essential
18 concept characterizes any access protocol that's
19 offered under this SMS/800 tariff, correct?

20 **A. Correct.**

21 Q. When was the first occasion at which

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1 you were present when disconnection of the 629
2 numbers from the Beehive system was discussed?

3 **A. I have no idea.**

4 Q. What's your best recollection? 1996
5 sometime?

6 **A. I have no idea.**

7 Q. Do you know where the discussion
8 occurred? Well, there were a series of
9 discussions prior to disconnection, weren't
10 there?

11 **A. I would assume there were, but I don't**
12 **remember any of them.**

13 Q. Didn't you testify on June 13, 1996,
14 that there were several months worth of
15 discussions involving yourself and others
16 figuring out what you were going to do with this
17 situation with Beehive?

18 **A. There are meeting notes that you have**
19 **that show those dates.**

20 Q. Have you given them all to us here in
21 this stack of documents that I've been examining

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1 you from today?

2 **A. Yes, we have.**

3 Q. These are all the board of director's
4 meetings at DSMI and all the management committee
5 meetings from the STM: is that right?

6 **A. SMT.**

7 Q. SMT. I'm sorry.

8 **A. Correct.**

9 Q. Too many of these numbers. Were you
10 present at all of those meetings where the
11 discussion issue and the Beehive 629 issue was
12 discussed prior to May 29, 1996?

13 **A. I wouldn't know that.**

14 Q. Who were the major players in that
15 decision-making process? Was it the DSMI board?
16 Was it a major player?

17 **A. No, the major players would have been**
18 **the RBOCs of SMT.**

19 Q. Is it fair to say that the SMT was the
20 decision maker as far as the disconnection
21 decision?

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1 A. I don't remember specifically how that
2 decision was made.

3 Q. But you remember that the RBOCs
4 serving on that committee made the decision?

5 A. No, I just said, I think, that I
6 didn't remember how the decision was made.

7 Q. I'm asking who made it, not how it was
8 made. Do you remember who made it?

9 A. No.

10 Q. Do you remember what was discussed at
11 the meetings, what options were discussed, what
12 do we do with this?

13 A. No.

14 Q. Do you remember discussions whether we
15 were going to give Beehive notice, that we were
16 going to do this?

17 A. No.

18 Q. You don't remember any discussions.
19 Do you remember any discussions like, gosh, if we
20 do this maybe some lives will be put in peril, we
21 should check into that? Anything like that that

1 end -- at the RespOrg end there's a computer
2 system that interfaces with us as opposed to a
3 terminal.

4 Q. Other than that, are there any other
5 ways?

6 A. For handling what?

7 Q. Where under the SMS tariff access is
8 provided to a RespOrg in a manner other than a
9 dial-up or dedicated basis?

10 A. It depends on what you're asking for.
11 I mean, if you're asking for access to number
12 reservation activities, no, there's not.

13 Q. There's not, okay. Now has DSMI ever
14 had any complaints from subscribers or RespOrgs
15 in the toll free number area complaining about
16 the assignment of numbers, who gets what, you
17 didn't give me this and you should have,
18 et cetera? Any complaints relating to number
19 assignment while you have been president of DSMI?

20 MR. JENSEN: Other than from Beehive?

21 BY MR. SMITH:

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1 you can recall?

2 A. No.

3 Q. That wouldn't stick out in your mind,
4 a safety issue? Was that raised at any of these
5 meetings that you attended?

6 A. I don't remember.

7 Q. Under the tariff, can access to the
8 database be provided to a RespOrg in a manner
9 other than a dial-up or on a dedicated basis?

10 A. There's mechanized generic interface.

11 Q. Is that process described in the
12 tariff?

13 A. Yes, it is.

14 Q. Okay. Describe that process for me
15 here today, if you would, please.

16 A. It's a system-to-system computer
17 interface high speed link.

18 Q. Is it, again, through a keyboard and
19 access through a computer as opposed to someone
20 calling someone or submitting a piece of paper?

21 A. It's computer-to-computer at their

1 Q. Other than from Beehive, yes.

2 A. I don't know how to answer that.
3 There are always people out there who have
4 concerns that their RespOrg didn't get their
5 number for them.

6 Q. I'm talking about complaints directed
7 at DSMI.

8 A. We don't have anything to do with the
9 number administration activities. It's
10 mechanized.

11 Q. Has anybody complained about the
12 mechanics of it?

13 A. There have been discussions very
14 recently about whether it was strictly first
15 in/first out.

16 Q. That's what I'm talking about, stuff
17 like that. Who raised that complaint?

18 A. MCI, AT&T.

19 Q. What was the nature of their
20 complaint?

21 A. Some of the queuing structures

1 associated with the process were not a hundred
2 percent first in/first out.

3 Q. Queuing is Q-U-E-I-N-G; is that right?

4 A. I don't know, actually. I think
5 that's right.

6 Q. Like getting in a line?

7 A. Correct.

8 Q. And did they formalize that complaint
9 with some kind of action before the FCC?

10 A. I don't know whether they formalized
11 it with the Commission.

12 Q. Okay. Has DSMI ever been sued in a
13 court? I'm not talking about the FCC or an
14 agency. But in a court before on account of its
15 involvement in the administration of the tariff?

16 A. No.

17 Q. Has DSMI ever had a complaint filed
18 against it at the FCC in the same regard?

19 A. Not that I'm aware of.

20 Q. Have you ever gone to mediation or
21 arbitration over those kinds of issues in the

1 past with any party?

2 A. No.

3 Q. What is a revenue loss to the RBOCs if
4 the services associated with this tariff are
5 detariffed?

6 A. I don't understand what that question
7 is.

8 Q. What do they stand to lose in dollars?

9 A. If what happens?

10 Q. If this database system is
11 disassembled.

12 MR. JENSEN: I'll object. You're
13 asking him to speculate again.

14 BY MR. SMITH:

15 Q. Or if they lose this business. If
16 they lose the tariff, somebody else takes over,
17 is put out to bid and somebody is a better
18 competitor and does it better and cheaper, what
19 are the RBOCs going to lose in dollars?

20 MR. JENSEN: Same objection.

21 BY MR. SMITH:

1 Q. Do you have an estimate? Do you have
2 an idea?

3 A. No.

4 Q. Has it ever been discussed in any
5 meeting you've attended?

6 A. Not to my knowledge.

7 Q. There was a lapse of time when Beehive
8 allegedly wasn't paying its RespOrg charges to
9 DSMI and when DSMI finally took steps in the
10 nature of enforcement steps. Do you remember
11 that?

12 A. Do I remember that there was a --

13 Q. The lapse of time.

14 A. There was an interval, yes.

15 Q. Do you remember how large it was?

16 A. No.

17 Q. A couple of years, wasn't it?

18 A. I don't know.

19 Q. Do you have an explanation as to the
20 inaction of DSMI in making its collection efforts
21 against Beehive?

1 A. I have no idea how long the interval
2 was.

3 Q. Well, do you know when Beehive signed
4 up as a RespOrg initially with DSMI?

5 A. They came on at portability in May of
6 '93, I think.

7 Q. And your first collections were by
8 letter, were they not, at the end of 1994?

9 A. I don't know.

10 Q. Do you have any recollection of why it
11 took so long to get around to collecting against
12 Beehive?

13 A. No.

14 Q. Why it took so long to getting around
15 to allegedly revoking their status as RespOrg?

16 A. No.

17 Q. Do you have any recollection of any
18 reason for the particular timing involved when
19 you did finally send out notices and so forth?
20 What prompted it?

21 A. What prompted it was past due

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1 accounts.

2 Q. Well, there's past due accounts for a
3 lot of months and you weren't prompted, but all
4 of a sudden you were prompted to do it. I'm
5 wondering what was the occasion in that month
6 that was different from all the other months
7 where you didn't act?

8 A. I can't respond to that. I don't
9 know.

10 Q. You don't have any memory of the
11 timing factor and why it was done then?

12 A. No.

13 Q. Did it have anything to do with
14 Beehive's objection to your tariff?

15 A. I have no idea.

16 Q. Do you remember any discussions about
17 that?

18 A. No.

19 Q. Did you ever have any conversations
20 with anybody about that?

21 A. About Beehive's objection to the

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1 tariff or about the linkage between the two?

2 Q. Both. Well, about the linkage between
3 the two.

4 A. No.

5 Q. You don't remember?

6 A. None. No memory.

7 Q. How about other RespOrgs out there in
8 1993, 1994, 1995, and 1996? Any that were
9 delinquent in paying their charges under this
10 tariff?

11 A. I don't know.

12 Q. Do you remember any letters sent out
13 saying you got to pay or else we're going to
14 revoke your RespOrg status and disconnect your
15 numbers? Do you remember anything like that?

16 A. I know we sent letters like that out.

17 Q. Okay. When and to whom?

18 A. I don't have the list with me. I
19 think about every month.

20 Q. Have you ever revoked somebody's
21 status as a RespOrg on account of delinquency

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1 other than Beehive -- your allegation that you
2 did in Beehive's case, at least?

3 A. I'm not sure.

4 Q. No recollection at this point?

5 A. I mean, I don't know that we have or
6 haven't. It wouldn't surprise me either way.

7 Q. Nothing that sticks out in your mind,
8 though?

9 A. No.

10 Q. Could you estimate how many times it
11 may have happened or just don't know?

12 A. I have no idea.

13 Q. From 1993 to 1996, how many RespOrgs
14 were there who had their numbers disconnected
15 like you did with Beehive for any reason?

16 A. I can't tell you that.

17 Q. Can you remember whether there were
18 any?

19 A. Well, there's a whole list.

20 Q. Of disconnected numbers?

21 A. Yeah.

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1 Q. Okay. Where is this list?

2 A. We have it at the office.

3 Q. Okay. For that period of time?

4 A. I don't remember the time frames
5 associated with them.

6 Q. The time that I asked you was 1993 to
7 1996. That's the time frame that we're looking
8 at. That's what my question was.

9 A. I have no idea about that time frame.

10 I know we have a list of companies that have
11 stranded numbers, but I don't know -- I don't
12 remember offhand what the time frames associated
13 with them are.

14 Q. Okay. Why the numbers were stranded,
15 do you remember that with any of these companies?
16 Do you remember any of the companies?

17 A. No.

18 Q. Do you remember why they went inactive
19 with their status or if that was the cause for
20 the numbers being stranded?

21 A. They had to have been inactive or the

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1 numbers wouldn't be stranded. Some are voluntary
2 disconnects; some are disconnects because of
3 bankruptcies; some are consolidations. I mean,
4 we disconnect 150 or so RespOrg IDs every month.

5 Q. But what about this period, 1993 to
6 1996?

7 A. I can't tell you that.

8 Q. Do you have a specific memory or are
9 you just projecting backwards in time from your
10 present experience?

11 A. I can tell you what we do now. I
12 don't remember what was going on at that point in
13 time.

14 Q. How did you prepare for this
15 deposition, Mr. Wade?

16 A. I spent six hours in Newark Airport
17 yesterday trying to get down here late last
18 night.

19 Q. Okay. Just waiting for a change of
20 airplane or waiting to get on an airplane?

21 A. Cancelled flights.

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1 Q. I mean, prepare to respond to
2 questions. Did you make any review of documents?

3 A. No. I mean, we scanned the documents
4 to try to produce the documents as part of the
5 document production activity, but I haven't gone
6 back through and reread everything or anything
7 like that.

8 Q. Have you talked with anybody about the
9 questions that might be asked and how you might
10 respond?

11 A. I've talked with counsel.

12 Q. Anybody other than counsel?

13 A. No.

14 Q. You didn't talk with your wife?

15 A. No.

16 MR. SMITH: Okay. You should have
17 objected, Floyd. That assumed a fact not in
18 evidence. I don't know that he's married.

19 MR. JENSEN: You're too fast for me.

20 BY MR. SMITH:

21 Q. Now you're aware that while

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1 Judge Jenkins was keeping everybody on hold and
2 this matter was pending in his court that counsel
3 for DSMI on at least two -- and there may have
4 been more, but two comes specifically to mind.

5 Two occasions he went to court and told

6 Judge Jenkins the numbers were going to be
7 released, the 629 numbers, unless something was
8 done. Do you recall those events?

9 A. No.

10 Q. Do you recall meeting with your board
11 of directors at DSMI or at the management level,
12 the management team, and discussing this issue of
13 getting the litigation in Utah off dead center?

14 A. I don't know what that means, "getting
15 the litigation off dead center."

16 Q. Getting a ruling, getting on with it,
17 getting these numbers released.

18 A. You have the meeting notes. You can
19 see what was discussed.

20 Q. Didn't we look at one exhibit, in
21 fact, where that subject came up this morning or

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1 this afternoon?

2 A. The subject of?

3 Q. Releasing the numbers.

4 A. Yes.

5 Q. There was an action item in one of
6 these items that said to release them and then
7 tell the judge?

8 MR. JENSEN: I'll object. You're
9 mischaracterizing the document.

10 MR. SMITH: That's what it said.

11 MR. JENSEN: Go back to the document
12 and read it.

13 BY MR. SMITH:

14 Q. You do remember that steps were taken
15 and pleadings were filed in the Utah court to get
16 clarification from Judge Jenkins and to get some
17 ruling, to get an order, correct?

18 A. I didn't say that.

19 Q. Okay. Would it help to show you
20 copies of the pleadings? Would that refresh your
21 recollection or are you just going to tell me you

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1 don't remember?

2 A. I mean, I don't remember. If there
3 are pleadings there that were filed, then I
4 assume they were filed.

5 Q. Okay.

6 A. That doesn't mean that I remember them
7 being filed.

8 Q. Do you remember ever discussing the
9 filing of the pleading in light of a Tenth
10 Circuit Mandate and getting some clarification in
11 terms of that order and what it meant? Have you
12 ever discussed anything like that with your DSMI
13 board of directors?

14 A. I don't know. If it does, it would be
15 in the meeting minutes.

16 Q. You don't have any recollection? How
17 about with your management team?

18 A. No.

19 Q. Some kind of discussion such as, you
20 know, we're taking this position and interpreting
21 it this way, but if we're wrong, we might not be

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1 following it, we're not sure, maybe we'd better
2 get clarification? Any discussion of that sort
3 as to the Tenth Circuit order in either your
4 board of directors at DSMI or your management
5 team?

6 A. And you're asking if I have specific
7 recollection of something like that happening?

8 Q. Yes.

9 A. No.

10 Q. Have you -- as to the litigation
11 pending between Beehive and DSMI in Utah, is it
12 your practice and policy through the course of
13 that litigation to review all pleadings that are
14 filed by your counsel in that court?

15 A. Yes.

16 Q. Okay. Have you done so as to all
17 pleadings?

18 A. I believe so.

19 Q. Okay. And is the same true for
20 pleadings from Beehive's side? Are they
21 forwarded to you for review, and have you

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1 reviewed them as a matter of practice throughout
2 the course of that proceeding?

3 A. I believe so.

4 Q. Okay. Now I asked the same question
5 about pleadings that are filed by your counsel
6 with the FCC in any DSMI, RBOC, Beehive-related
7 docket. As a matter of practice, have you been
8 copied on all those pleadings and reviewed them?

9 A. Yes, I have.

10 Q. Okay. Have any of the pleadings in
11 the DSMI-Beehive litigation or any of the
12 pleadings involving Beehive, DSMI, and the RBOCs
13 with the FCC from DSMI been filed without your
14 authorization or approval?

15 A. Not that I'm aware of.

16 Q. Okay. Now I asked you as to the Tenth
17 Circuit mandate whether you have ever
18 participated in a conversation or discussion with
19 TSMI personnel or the management team personnel
20 concerning getting some clarification of that
21 order, and you said you couldn't recall, correct?

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1 A. Correct.

2 Q. Okay. -Now I want to know, have you
3 personally individually inside your own head
4 considered that there was a need to get
5 clarification of that order for any reason, the
6 Tenth Circuit order?

7 A. No.

8 Q. Okay. Was DSMI or the management team
9 concerned from '96 through January of '99 that so
10 many of the 629 numbers were on unavailable
11 status?

12 A. I don't know what you mean by were
13 they concerned.

14 Q. Well, did you want to get them out of
15 unavailable status, out circulating?

16 A. Well, clearly the point of portability
17 is to have numbers available to subscribers.

18 Q. So you were concerned?

19 A. I mean, the concept of having numbers
20 locked up is not consistent with number
21 portability.

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1 Q. Did you take steps with the court in
2 Utah to prompt the court to do something about
3 that, to release the numbers, to get them out
4 there in use?

5 A. Not that I recall.

6 Q. Okay. Isn't it a fact that your
7 counsel filed a number of pleadings representing
8 to the court that this was not good, it was not
9 policy, it was not nice under the tariff, get
10 these numbers out?

11 MR. JENSEN: We've plowed this ground
12 before. I don't know if you're asking him if he
13 recalls what the pleading says --

14 MR. SMITH: Can we stipulate that
15 that's the fact, and then I'll move onto the next
16 question?

17 MR. JENSEN: The pleadings speak for
18 themselves.

19 MR. SMITH: Can we stipulate to the
20 fact that no similar pleadings have been filed
21 since January of 1999 anywhere with the District

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1 Court in Utah?

2 MR. JENSEN: The pleadings that have
3 been filed are on file, and you know what they
4 are. We know what they are.

5 MR. SMITH: I want a stipulation so I
6 can ask my next question, which is why haven't
7 there been any.

8 MR. JENSEN: That's not a question
9 that --

10 MR. SMITH: I wonder if --

11 MR. JENSEN: You're asking for a legal
12 analysis.

13 MR. SMITH: I'm asking for what
14 discussions there have been.

15 MS. TUCKER: Privileged.

16 BY MR. SMITH:

17 Q. As far as -- since January of '99,
18 have you discussed with your management team or
19 your DSMI board filing something in Utah to get
20 these numbers out of unavailable status?

21 A. Summaries of the discussions are in

Page 315

1 the notes.

2 Q. Can you remember independent of those
3 minutes?

4 A. No.

5 Q. And you know why I keep asking that?
6 I know you keep referring to the minutes, but not
7 everything that's discussed is necessarily put in
8 those minutes. Things can be discussed that
9 aren't put there, so I want your independent
10 recollection. With that in mind, what do you
11 independently recollect, if anything,
12 post-January '99 discussions with your DSMI board
13 or management committee as far as filing
14 something out in Utah to get these numbers off of
15 unavailable status?

16 MR. JENSEN: That question has been
17 asked and answered.

18 MR. SMITH: I don't think that one was
19 answered.

20 MS. TUCKER: The case was referred to
21 the FCC in April of '99, so wouldn't --

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1 MR. SMITH: That's argumentative. I'm
2 asking a fact question.

3 BY MR. SMITH:

4 Q. The fact question is, you know, have
5 you had those kind of discussions?

6 A. Not that I recall.

7 Q. Isn't it a fact, Mr. Wade, that you
8 have been instructed by someone at the RBOC or
9 Telcordia or Bellcore level to do everything in
10 your power to block Beehive's access to these 629
11 numbers and not to have them assigned under any
12 circumstances?

13 A. That one I can answer. No.

14 Q. Isn't it a fact that you would incur
15 sanctions from your superiors if you were to
16 allow that to happen, if you were not to block
17 Beehive in its efforts to get the 629 numbers?

18 A. No.

19 Q. You can honestly say that you have no
20 fear in your heart that you will incur the
21 displeasure of those you answer to if you release

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1 these numbers to Beehive --
2 **A. Yes, I can say that.**
3 Q. -- on your own initiative? Just I'm
4 the man, I'm in charge of this, here I go?
5 **A. What I say, I say.**
6 Q. I decide. You can do that today?
7 **A. You switched questions there. What's**
8 **your question?**
9 Q. That you are without fear in making
10 that decision, and if you made it to release the
11 numbers, you wouldn't be worried about the
12 consequences?
13 **A. The question I think you asked was am**
14 **I afraid of sanctions if the numbers were**
15 **released, and the answer was no.**
16 Q. From your superiors?
17 **A. Right.**
18 Q. Okay. Why won't you talk settlement
19 with Beehive?
20 **A. Settlement of what?**
21 Q. Of this numbers issue.

1 entitled to ask that question. It also goes as a
2 follow-up to the question that you permitted,
3 which is why won't you just release these
4 numbers. Aren't you afraid that somebody above
5 you is going to squash you if you do? He says,
6 no, I'm not, so I say, why don't you talk
7 settlement with this thing. If you're the man
8 and you can settle, then let's talk. I think the
9 answer is because someone above him says, don't
10 you dare talk to those guys.
11 MR. JENSEN: You can make speeches and
12 arguments all you want on the record.
13 MR. SMITH: I'm answering your
14 objection.
15 MR. JENSEN: Well, okay.
16 MR. SMITH: I'm answering your
17 objection.
18 MR. JENSEN: I've made the objection.
19 BY MR. SMITH:
20 Q. Okay. What's the answer to my
21 question?

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1 MR. JENSEN: I'll object. That's
2 clearly outside the scope of examination --
3 MR. SMITH: I think it's very
4 relevant.
5 MR. JENSEN: It's also protected by
6 the rule against disclosure of settlement
7 discussions.
8 MR. SMITH: I'm not asking him to
9 disclose settlement discussions. I don't think
10 there have been any. My question is, why haven't
11 there been any.
12 MR. JENSEN: Same objection.
13 MR. SMITH: Why won't you talk to us?
14 MR. JENSEN: It's outside the scope of
15 discovery.
16 MR. SMITH: It goes to motive. It
17 goes to the possibility of deliberate intent in
18 blocking Beehive's access to the numbers. It
19 goes to -- that intent would suggest a
20 contrivance to thumb noses at the Court's order
21 at any cost. It's very relevant, and I'm

1 **A. Should I respond? What's the question**
2 **again?**
3 Q. Why won't you talk settlement with us?
4 THE WITNESS: Should I respond?
5 MR. JENSEN: Sure.
6 THE WITNESS: I'm not in a position to
7 talk settlement. DSMI is charged with supporting
8 the RBOCs in a provision of services via a
9 tariff. There are no provisions in the tariff
10 for settlement.
11 MR. SMITH: Let's go off the record.
12 (Discussion off the record.)
13 BY MR. SMITH:
14 Q. The record should reflect that we
15 accommodated Mr. Wade in agreeing to let him come
16 at 10:00 so he could fly down this morning. The
17 quid pro quo was we could keep him until 7:00 or
18 8:00 tonight, and we're not getting satisfaction
19 on the quid pro quo. I'd like the record to
20 reflect my understanding in that respect. I'm
21 doing my best to get him out of here so he can